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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY MICHAEL HERNANDEZ,

Defendant and Appellant.

F071893

(Super. Ct. No. BF159620A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Robert L.S. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California for Plaintiff and Respondent.

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Anthony Michael Hernandez entered into a plea agreement for a fixed prison term and dismissal of various additional charges. Appellate counsel could not identify any

* Before Levy, Acting P.J., Kane, J. and Detjen, J.

arguable issues in the record. After reviewing the record, we agree and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The complaint, which was filed on April 1, 2015, charged Hernandez with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),¹ battery resulting in serious bodily injury (§ 243, subd. (d)), and carrying a concealed dirk or dagger (21310). The first count alleged as an enhancement that Hernandez inflicted great bodily injury on the victim within the meaning of section 12022.7. The second count alleged Hernandez used a deadly or dangerous weapon during the battery within the meaning of section 12022, subdivision (b)(1).

According to the probation report, the victim was walking home when Hernandez approached him and made some nonsensical comments. The victim attempted to walk away, but Hernandez stabbed the victim in the neck and shoulder with a pocket knife. The victim fled when Hernandez's attention was diverted by another person who told Hernandez to leave the victim alone. The victim did not know why Hernandez attacked him, but thought it may have been induced by Hernandez's drug abuse.

On April 13, 2015, Hernandez entered into a plea agreement. He agreed to plead no contest to the assault count and admit the great bodily injury enhancement. In exchange, the prosecutor agreed to a midterm sentence of three years in prison enhanced by three years for the injury, for a total term of six years in prison. Hernandez completed a "Felony Advisement of Rights, Waiver and Plea Form." In the form he acknowledged the terms of the agreement, the consequences of his plea, and his constitutional rights. Hernandez also agreed to waive his constitutional rights.

At the hearing the trial court confirmed Hernandez understood the terms of the agreement, and informed him his conviction would constitute a strike. Hernandez did not

¹ All statutory references are to the Penal Code.

have any questions about the plea, and confirmed defense counsel explained the plea form to him, and that he had initialed and signed the form. The trial court then accepted Hernandez's plea, and the remaining counts were dismissed.

The trial court sentenced Hernandez pursuant to the terms of the plea agreement.

DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asserting that after reviewing the record he could not identify any arguable issues. By letter dated November 10, 2015, we invited Hernandez to inform this court of any issues he wished us to address. Hernandez did not respond to our request.

After thoroughly reviewing the record, we agree with appellate counsel there are no arguable issues in this case. Hernandez entered into a plea agreement at an early stage of the proceedings. He was sentenced in accordance with the plea agreement. The terms of the plea agreement were explained to him, and he did not have any questions about the plea agreement.

Prior to the sentencing hearing, Hernandez made a motion for appointment of new counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).² However, he withdrew the motion before the sentencing hearing, once again agreeing to the terms of the plea agreement.

While Hernandez did not respond to our invitation to inform us of any questions he wished us to address, he did petition the trial court for a certificate of probable cause. The petition alleged, in essence, that he did not understand the sentence to which he agreed because his attorney did not properly explain it to him. This was the same argument he made during the *Marsden* hearing, and which Hernandez withdrew. And the transcript from the *Marsden* hearing clearly demonstrates that Hernandez was informed

² Although we call this a *Marsden* motion, the trial court and appellant's counsel referred to the motion as a "*Smith*" motion.

of the sentence to which he agreed before he withdrew his motion. Accordingly, there is no merit to this argument.

To the extent that Hernandez asserted in his petition that he was incompetent to enter a plea, there is nothing in the record to support the argument. In fact, the record indicates Hernandez freely and voluntarily entered into the plea agreement.

DISPOSITION

The judgment is affirmed.